Law Commission
Reforming the law

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Dear consultee

The Law Commission regularly consults on new law reform projects to be included in its programmes of law reform. We are grateful to you for proposing an item for inclusion in the Law Commission's Eleventh Programme of law reform. Please use this questionnaire to tell us what you are proposing and why. The more you can tell us, the better able we will be to understand and assess your proposal. So please give us **as much information as you can**, even if you cannot answer all the questions. If we need to know more about your proposal at any stage, we may get back in touch with you.

What we need to know

We ask you to think carefully about whether your proposal is appropriate for the Eleventh Programme. The projects that will be taken on by the Law Commission must, of course, **relate to the law**, and will focus on issues that:

- are **systemic**,
- are caused by laws or policies that are **complex** or **hard to understand**,
- have **widespread discriminatory impact** or **cause disproportionate costs**, or
- arise from laws or policies that are **inconsistent with modern standards**.

The Commission also considers the **costs and benefits** of all of its recommendations for reform. Please tell us what you can about the economic and other impacts of your proposal.

What the Commission cannot include in its Eleventh Programme

There are some social and policy issues that the Law Commission will not normally consider because they are more appropriate for government to consider directly. These include highly controversial or political issues, such as the laws relating to abortion, immigration and the Human Rights Act, or issues of established government policy, such as the tax rate.

The Commission cannot consider individual problems, such as the way a case has been decided or unsatisfactory dealings with a local or central government authority. And finally, the Commission is not able to consider problems that arise in Scotland or Northern Ireland.

What happens next?

We will review all the proposals that are made to us before drawing up a list of potential projects, where appropriate working closely with the relevant government departments. As set out in the Law Commissions Act 1965, the Lord Chancellor will decide the final contents of the Eleventh Programme. We expect this to be during 2011.

We understand you may be disappointed if your proposal is ultimately not taken forward, but please be assured we are grateful for your contribution. If you have any questions about the consultation process, please contact us on 020 3334 0255 or via eleventhprogramme@lawcommission.gsi.gov.uk.

Thank you again for taking the time to complete this questionnaire and help us in our aim of making the law fair, simple, clear and cost-effective.

Kind regards

The Law Commission

Please send us your response no later than **Friday 15 October 2010**.

Law Commission
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Eleventh Programme of Law Reform consultation response

Please answer as many of these questions as you can, as fully as you can. If necessary, continue on additional sheets. Please also indicate where you are not able to provide an answer.

Please tell us about yourself:

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Member of the public	☐		
Third sector/voluntary sector	☐	Commercial sector/business	☐
Nature of third sector/business organisation:			
Lawyer	☐	Academic	☐
Specialist area:		Specialist area:	
Member of the judiciary	☐	Civil servant	☐
Specialist area:		Department:	
Local authority staff member	☐	Parliamentarian	☐
Other (please state): Independent statutory body responsible to Parliament.			

*The Law Commission is a signatory to the Government's **Code of Practice on Consultation** and we carry out our consultations in accordance with the Code criteria, which are set out on the last page of this questionnaire.*

*We treat all responses as public documents in accordance with the **Freedom of Information Act** and we may name respondents and attribute comments, if we publish details of this consultation. If you want your submission to remain confidential, you should contact us before sending your response. (Please note that we disregard automatic IT-generated confidentiality statements.)*

1. In general terms, what is the problem that requires reform?

The Electoral Commission submits that the law governing the conduct and and administration of elections is in need of reform. Elections are vital to our democracy. They are the means by which the popular vote is transformed into workable government. But the legal framework which underpins elections has developed into a highly complex area of law which is under strain and marked by a number of problems.

These problems include, but are not limited to:

the sheer number of laws in this area;

the outdated nature of some of these laws;

inconsistencies between the jurisdictions for which elections are conducted (national, local, direct mayoral, and European elections); and

legislation which is at times ambiguous or imposes undue administrative burdens in its implementation.

The last major reform of electoral laws took place in the 1870s. Since then, changes to electoral laws have been made on a piecemeal basis, with new laws being layered over the top of existing ones. New developments in elections such as elections to the European Parliament have been accommodated within the framework of existing laws. Amendments to one Act can be found as provisions in a later Act.

The proper administration of elections must deal with subjects that are dealt with in several disparate statutes. The main statutes in this area are the Representation of the People Act 1983, the Representation of the People Act 2000 and the Political Parties, Referendums and Elections Act 2000. Other relevant statutes are the House of Commons Disqualification Act 1975, the Greater London Authority Act 1999, the European Parliamentary Elections Act 2002, the Electoral Administration Act 2006, the Local Democracy, Economic Development and Construction Act 2009 and the Political Parties and Elections Act 2009. However electoral legislation also includes the Act of Settlement 1700 and the Sheriffs Act 1887. By the Electoral Commission's count, there are at least 22 statutes to which electoral administrators must have regard.

In addition to this primary legislation, there are also numerous regulations, rules and orders which make provision that relates to the running of elections. The appropriateness of the division between what is contained in primary and secondary legislation is not always clear. For example, detailed rules for the conduct of parliamentary elections are contained in primary legislation but the corresponding rules for local government elections are contained in secondary legislation. In addition, different criminal offences are contained in both primary and secondary legislation.

The large number of laws in this area, coupled with the way that they have been made, leads to difficulties in the interpretation of the law and, consequently, in the administration of elections. It is not always straightforward to find the relevant provision or understand how it might interact with the rest of the system. These difficulties are currently mitigated by guidance produced by the Electoral Commission – in a few areas administrators have a statutory duty to follow this guidance but, in other areas, they do not.

Moreover, the Electoral Commission has identified discrepancies in the laws governing elections in different jurisdictions. This means that in certain cases, what is permitted in one election is not permitted in another. This creates confusion and undermines the perception of the law.

The increasing number of elections which are being conducted also adds to the complexity. For example, on 6 May 2010, there were elections for 649 parliamentary constituencies, all seats in 32 London boroughs, seven district councils had half of their seats up for election, and 69 district councils, 36 metropolitan councils and 20 unitary councils had one third of their seats up for election. There were also four mayoral elections and one mayoral referendum.

Parish council elections which were scheduled to take place on the 6th of May were deferred by law for three weeks until the 27th of May.

The Electoral Commission is of the view that electoral legislation needs modernisation and reform, with an eye to making the law simpler, more consistent, and more coherent. This will benefit those involved in running elections, those standing for election and, most importantly, those wishing to cast their vote.

2. Can you give an example of what happens in practice?

For example, if you are a solicitor or barrister, you might describe how the problem affects your clients.

The Electoral Commisison has a statutory duty to keep electoral law and related matters under review (s 6(1) Political Parties Referendums and Elections Act 2000). The Commission has interpreted and discharged this obligation by investigating and reporting on particular problems in the administration of elections that come to its attention in the period after the conduct of an election.

We provide below some examples of problems that we have identified. We stress that this list is in no way exhaustive but merely indicates the range of concerns with the legal framework as it exists. Should the Law Commission decide to include this area in its 11th programme of reform, or require further information to assist it in deciding whether or not to include it, we can provide many more detailed examples of the difficulties that have come to our attention.

I Fragmented and disparate laws

(i) Some of the problems in this category are self-evident. By way of example, the May 2010 elections required electoral administrators to be familiar with up to 25 separate pieces of primary and secondary legislation, with the added complexity of particular legislation applying to Scotland, Wales, and Northern Ireland. The range of laws involved and the fact that they are spread across so many different instruments not only makes the relevant law difficult to find but also increases the potential for confusion in interpreting and applying the law once found.

In addition, in many areas the May 2010 parliamentary election was combined with a local government election. This required the application of an extremely complex set of combination rules governing what processes must be combined, and how that combination must operate. Combination rules make amendments to the rules for the conduct of both combined elections, but in different ways. The current system becomes even more complex and difficult to follow in the (not infrequent) event that different elections are combined.

(ii) The Electoral Commission devotes considerable resources to producing (mostly non-binding) guidance to assist Returning Officers and Electoral Registration Officers in discharging their duties under electoral law. Resources are also expended in providing training in relation to this guidance, answering queries about the guidance, and monitoring electoral administrators' performance.

For example, the Electoral Commission's guidance on the duties of an Electoral Registration Officers refers to nine separate statutes and six regulations and orders. To explain the legislative framework requires several hundred pages of guidance.

II Difficulties caused by the legislative web

(i) The complexity of the relevant laws can cause anomalies when amendments are made. These create confusion for voters and candidates as well as adding to the costs of running an election. This is illustrated by the example below.

In 2006, changes were made to the rules for parties registering joint descriptions. However, corresponding changes to the rules relating to joint emblems were not made. This disparity was not identified by the Ministry of Justice, the Electoral Commission, the political parties themselves or electoral administrators. The discrepancy was also not identified in the Electoral Commission's guidance for Returning Officers and candidates.

Consequently, candidates approved by two more more political parties who wished to use a joint description as well as a joint emblem were unable to do so. Some chose to withdraw their nomination and stand as a candidate for a single party. They were then able to use an emblem. Others chose to proceed as a joint candidate and were unable to use an emblem. This apparent error not only prevented candidates from using the full

range of political communication tools, but also the AEA has highlighted the impact that this would have had on voters who are not literate and who rely on pictorial messages to help them cast their vote. In some local elections, as the problem was not identified until after the ballot papers were printed, these had to be withdrawn and reprinted, at a cost of thousands of pounds.

(ii) The following problem is an illustration of how the piecemeal and fragmented way in which changes to electoral law are made creates confusion and can make the system vulnerable to exploitation.

Registration on the electoral register is a pre-requisite for voting in elections. Traditionally, the register has always been compiled by the annual household canvass and the Representation of the People Act 1983 (RPA 1983) provides for the conduct of the canvass. The RPA 2000 amended the RPA 1983 and introduced a system of individual registration on a year round basis ('rolling registration'), which now sits alongside the canvass. The detailed process for making an application for rolling registration is set out in secondary legislation. The new system provided for new registrants to be added to the register which was published on a monthly basis except during the canvass period (September to November). In 2006, in an attempt to improve voting levels, the Electoral Administration Act 2006 inserted a new provision into the already complex provisions on registration in the RPA 1983. This new provision permitted people to register up to 11 days before polling day. However, the legislation did not permit changes that would have been made during the annual canvass to be used for an election that was conducted during the canvass period. An attempt was made to resolve this problem in the Political Parties and Elections Act 2009. However, it has since become clear that this has created problems of its own. Names added to the canvass form can be added to the register to be used at a mid-canvass election, but deletion of names crossed off the canvass form is not permitted. This means that voters remain on the register even though they have moved or are deceased. The only way these people can be deleted from the register is via direct notification from the elector herself or following notification of death from the Registrar of Births, Deaths and Marriages.

This is an example of an area of the law in which provision is contained in at least four different statutes as well as secondary legislation, and the difficulties this creates when imposing further amendments on what is already heavily amended legislation. The legislative framework has added to the difficulties of maintaining an accurate register and, in doing so, increases the opportunity for electoral fraud.

III Ambiguous provisions

(i) In some areas the law is ambiguous. An example is the meaning of ‘residency’ under section 5 of the RPA 1983. This is an important example as residency is a requirement for entitlement to register and, thus, to vote under sections 1-4 RPA It might be expected that a provision that is central to conferring the franchise should be clear and unambiguous and cater for all scenarios. Yet it is unclear how the provision operates for those who have two homes, such as students and others with a second home. The provision uses key terms - "resident" and "home" - but does not define them. It is not clear whether the same test for residency should be used as is used for other legislative purposes (for example tax), or whether electoral law requires a different approach. The question of residency and second homes has been considered in two cases, Fox v Stirk and Ricketts v Cambridge [1970] 3 All ER 7. However, as these are English cases, they have only persuasive value in Scotland. Similarly, there are two Scottish cases, Scott v Phillips (1974) SLT 32 and Dumble v ERO (Borders) (1980) SLT 60 which have only persuasive value in England. The Electoral Commission has issued guidance on this point which states that "when making a determination on the residence requirements, the Electoral Registration Officer must consider the circumstances of the applicant, including the purpose for which they are present at a particular address and/or the reasons they are absent." This is an accurate reflection of the current state of the law yet the guidance cannot provide the clarity that would be desirable. The age of the above cases and the

fact that they were decided before the rolling registration process was introduced means that either a test case or greater legislative clarity would be of real assistance to those tasked with determining important questions of residency in the electoral registration process.

(ii) Section 9 of the RPA 1983 addresses the duties of the Electoral Registration Officer during the annual canvass. The requirement for the discharge of these duties is in section 9A. It states that the registration officer "must take all steps that are necessary for the purpose of complying with his duty to maintain the registers under section 9 above." The non-exhaustive content of what is meant by "all steps that are necessary" is given in section 9A. This includes the making of house-to-house inquiries. The Electoral Commission interprets the duty as requiring that this step is taken in all cases where other listed steps have not yielded results save in exceptional circumstances - for example, where there are personal safety concerns. However, this interpretation has been challenged by some charged with discharging the duty who argue that they are not required to conduct house to house enquiries at all. The ambiguous manner in which the provision is drafted has implications both for the accuracy of the register and levels of enfranchisement. In this example (as in others – see I(ii) and II(ii)) the uncertainty appears to have been caused (in part at least) by the practice of laying the new provision (s9A) on top of an existing, and already relatively complex, provision (s9), where simplification of the law could achieve the intended policy in much clearer terms.

IV Legislative requirements that impose undue administrative burdens or have unexpected results

(i) The rules governing the conduct of an election are detailed and prescriptive. Whilst as a matter of policy this may be desirable in that it allows no scope for the arbitrary exercise of discretion it also means that, in some cases, the level of prescription can yield unexpected results. For example, difficulties have been revealed in the wake of the volcanic ashcloud which closed down European airspace in April 2010. People who had planned to be abroad at that time had applied for a postal vote to be sent to their holiday address. When they were unable to leave the UK, there was no provision in the rules for a postal vote to be sent to their home address. Nor were they, having applied for a postal vote, eligible to vote in person. The prescriptive nature of the legislation could have resulted in thousands being disenfranchised had the Electoral Commission not issued guidance on the application of provisions for ballot papers that have been lost or not received. Those voters were then eligible to apply for a replacement ballot paper.

V Inconsistencies or duplications between jurisdictions

This is a further problem which arises out of the volume of legislation relating to elections. Each type of elections has its own rules governing the process. In some cases, these are duplicates, while in others, the rules differ, but for no particularly evident policy reason.

(i) For example, the rules relating to election procedure provide for two stages in the determination of the result. These are the verification of ballot papers and the count. Where a single election is held the rules provide that the count may begin before the verification process is complete. However, where a combined national and local election is held the rules require that the verification for both elections be completed before either count can begin. Not only is this inconsistent with the process for single elections but it also imposes a considerable burden on election workers (see IV above), particularly when combined with the new requriement (under the Consititional Reform and Governance Act 2010) that the count in a parliamentary election must begin within four hours of the close of the poll.

(ii) As a further example, those wishing to stand as candidates must first be nominated as such. However, the rules relating to the nomination process are not universal. Candidates in UK parliamentary elections must be nominated by ten "subscribers". In an election for the Scottish Parliament, the nomination form is signed by the candidate and one witness to the candidate's signature. In an election for the National Assembly for

Wales, only one subscriber is required to sign the nomination form and this can be the candidate.

VI Appropriateness of categorisation issues

(i) This is a general systemic concern about the proper placement of legislative rules. For example, the rules relating to UK parliamentary elections are found in Sch 1 of the RPA. This means that any amendment to these rules must be effected by primary legislation. The corresponding rules for local government elections (aswell as rules for the Welsh Assembly, and the Scottish Parliament elections) are contained in secondary legislation. This creates difficulties in ensuring consistency between the different sets of rules and means there is a lack of flexibility in terms of making necessary amendments to the UK parliamentary rules.

VI Provisions requiring modernisation

(i) Much electoral legislation is premised on a model that does not take account of modern technological developments. The legislative requirements for various aspects of electoral administration to be conducted in person and/or by hand is time-consuming and not cost-effective. One such example is the rules relating to the election writ. This must be received in person by election officials. After the election, it must be filled out by hand and then delivered in person to the Royal Mail for delivery to the Clerk of the Crown. Similarly, the legislation clearly envisages that parts of the process for the nomination of candidates is conducted by delivery of the relevant documents by hand.

(ii) By way of further example, the regulations relating to the postal voting ballot boxes require that the open and empty box be displayed to candidates' agents before being locked and sealed. The postal ballots are then to be placed in the postal voters' ballot box. This approach is clearly modelled on voting in person where an individual places her ballot paper into the ballot box via a slot at the top. However, where thousands of people opt to vote by post and the votes are delivered en masse rather than individually, this requirement imposes an unworkable burden on administrators and is out of step with what happens in reality.

3. To which area of the law does the problem relate (please tick)?

Administrative or public law	☒	Criminal law	☐
Property or land law	☐	Family law	☐
Trusts and wills	☐	Commercial or contract law	☐
Consumer law	☐	Regulatory law	☐
Planning and environment	☐	Don’t know	☐

Other (please state):

4. How did you come across this problem?

For example, do you work in a government department that has identified the problem in the course of work on a particular project?

The Electoral Commisision's role is to regulate party and election finance and set standards for the running of elections. Specifically, the Electoral Commission:

• registers political parties

• makes sure people understand and follow the rules on party and election finance

• publishes details of where parties and candidates get money from and how they spend it

• issues guidance and sets the standards for electoral registration and running elections, and reports on how well this is done

• makes sure people understand it is important to register to vote, and know how to vote

• the Chair of the Commission, or someone she appoints, is Chief Countig Officer in any referendum held in accordance with the Political Parties and Elections Act 2000.

In the course of its work the Electoral Commission has encountered a number of problems in the law relating to its functions. These problems have also been commented on by judges, lawyers concerned with electoral law, and electoral administrators. These matters include structural problems as well as issues with the substantive law of elections. This submission focusses on the structural issues the Electoral Commission has identified; the Electoral Commission regards substantive policy issues as a matter for Parliament to decide.

The Electoral Commission has referred to these problems several times. In 2003 we issued "Voting for Change" where we called for a single electoral statute "to replace the confusing multiplicity in the existing legislative framework". We repeated our concerns in August 2008 in "Electoral Administration in the United Kingdom", noting that "that the complex and fragmented legal framework for electoral administration across the UK continues to impede the effective delivery of elections, and was identified as a key factor in the problems explored by the Gould report on the 2007 Scottish elections". We also said: "We would welcome further commitments from all governments with legislative responsibility for electoral administration to not only consolidate but also simplify and rationalise the legal framework for elections." In July 2010 our report on the administration of the 2010 UK general election noted that "we have identified a number of problems with the current legal framework that impact upon voters. These include poorly-designed ballot papers and voter materials, the descriptions and emblems for joint party candidates, emergency proxy votes not being available for employment related reasons and the limited number of suitable buildings that can be used as polling stations."

The poor state of electoral law has also been commented on by others involved in the field.

Judges who hear electoral petitions have commented on the need for modernisation in this area of the law, saying: "The 1983 Act cannot fairly be described as well drafted. As with many consolidating Acts, there was a tendency to gather up the existing law from all sources and simply tip it into the disorganised bag of a single Act of Parliament.

…the election petition is both inadequate and inappropriate as a method of controlling fraud. For electoral policy to be policed by what are, in effect, private civil law actions brought at the expense of the litigant, cannot be acceptable." (Commissioner Mawrey QC, Simmons v Khan (unreported, Slough, 18 May 2008)).

In his report on the 2007 local elections in Scotland Ron Gould observed that: "…the United Kingdom presents a challenging environment for those who need to find their way around electoral law. This is becoming more difficult as almost yearly changes to electoral legislation must be implemented. Changes are implemented in an asymmetrical way, some implemented across the UK, some only in Great Britain and some in England and Wales but not in Scotland. .. The fragmented approach can obviously lead to confusion among those

working on the legislation and also leaves more opportunity for drafting or compatibility errors."

The Association of Electoral Administrators (AEA), a non-governmental body representing the interests of electoral administrators, has also made calls for reform of electoral law. In its report on the May 2010 elections, the AEA recommended "the creation of a single Electoral Administration Act in accessible language setting out the high-level framework with the operational detail contained in secondary legislation. The key aim should be simplification and consistency of rules across all elections."

5. **We will be looking into the existing law that relates to the problem you have described. Please tell us about any court or tribunal cases, legislation or journal articles that relate to this problem.**

   For example, you might be able to tell us the name of the particular Act or a case that relates to the problem.

Please see appendix for a list of relevant primary and secondary legislation.

6. **Can you give us any information about how the problem is approached outside England and Wales?**

   You might have some information about how overseas courts or tribunals approach the problem.

In similar common law jurisdictions, such as New Zealand, the law relating to elections exists in two main statutes: the Electoral Act 1993 and the Local Electoral Act 2001. Some electoral matters are also dealt with in the Broadcasting Act 1989. In Australia, federal elections are governed by the Commonwealth Elections Act 1918.

The Electoral Commission would favour bringing together the UK's electoral legislation into a coherent statutory framework as part of the reform process.

7. **Within the United Kingdom, does the problem extend beyond England and Wales? If so, where?**

   For example, does the problem also arise in Scotland or Northern Ireland?

Electoral law is enacted by the Westminster Parliament but also currently covers elections in Scotland and Northern Ireland. Given the problems identified with inconsistences between some jurisdictions, we suggest that this would be a suitable subject for a joint endeavour with the Scottish Law Commission and where appropriate, with the Northern Ireland Law Commission.

8. **Can you identify particular costs that occur as a result of the problem? In particular, please identify any costs that affect the following groups:**

   - **government**
   - **businesses and the private sector**
   - **non-governmental organisations or charities, and**
   - **the general public.**

   For example, if the problem is one which must usually be resolved in court, court fees might be payable. If it involves consulting a solicitor or barrister, legal costs might be relevant. Or, if the problem was one which caused significant costs to businesses, you might be able to tell us how much time or money businesses would need to spend.

The Electoral Commission has not undertaken a costs analysis of the problem identified, but is able to identify two main categories of cost incurred as a result of the current state of the law. Monetary costs: These are incurred in the creation of guidance for interpreting and administering the law; the provision of legal advice at a national and local level where the law is unclear; and staff costs in extra time spent in administering complex and comfusing laws. Costs also are incurred when there is litigation over confusing or ambiguous electoral provisions. Non-monetary costs: There are general social detriments in maintaining a legal framework for elections that is so voluminous, unwieldy, and out of date. The impact of this situation on voters, the very people the legislation is supposed to serve, is concerning. As demonstrated by the examples given above, the lack of clarity in the law that results from this framework can make it harder for people to be registered to vote; harder to receive their votes (or vote at all) when they cannot vote in person; and at times has made it harder for people to properly identify their preferred candidates when faced with a ballot paper. The Electoral Commission believes that these sorts of barriers to participation should be removed.

9. **What is the scale of the problem?**

   This might include information about the number of people affected this year, or the number of cases which were decided by a court or tribunal in a given period.

Please refer to section 2. The problem has an impact on all voters as well as those that stand for office and electoral administrators.

10. Does the problem affect certain groups in society, or particular areas of the country, more than others? If so, what are those groups or areas?

As an example, if the law relates to agricultural issues, it might affect farmers and their families more than the general population.

The right to vote and the right to stand as a candidate in elections are of importance to all members of society. In practical terms, the problems identified above are experienced mostly by those working in electoral administration, both directly, and in ancillary roles such as legal services. Complicating the picture in electoral administration is the fact that while Eletoral Registration Officers and Returning Officers are separate statutory roles with distinct duties, in practice, in many parts of the country, the roles are undertaken by the same person. The potential for confusion here is obvious making clarity and simplicity in the law essential.

These problems then have flow-on effects for voters who on election day and in the days leading up to it, bear the consequences of the accumulated legislative complexity and the difficulties in administering these laws.

11. What do you see as the benefits of reforming this area of the law?

This might be in terms of economic benefits, such as saving government money or reducing the impact on frontline services. Or it might be a social or environmental benefit such as making the law clearer, or modernising an outdated approach to a particular social problem.

The benefits of this reform are two-fold.

Firstly, there would be a reduction in the monetary costs identified above.

Secondly, there are considerable non-monetary benefits which could be realised. These include the betterment of existing law, including moderniation, as well as bringing greater clarity and removing confusion; and in doing so, improving the reputation of electoral law and making it less vulnerable to challenge. Improving the management and administration of elections through reforming the underlying structure could also help increase participation in elections, improve public confidence in the legitimacy of elections, and strengthen the foundations of civil society.

If both the legal framework and the associated administrative difficulties could be addressed, the Electoral Commission believes that the interests of voters in participating in well run elections will be better served.

12. In your view, why is the Law Commission the appropriate body to undertake this work, as opposed to, for example, a government department, Parliamentary committee, or a non-governmental organisation?

As noted, the Electoral Commisison has a statutory duty to keep electoral law and related matters under review. In this way, we have identifed a number of problems with the current framework. The Electoral Commission also raises issues of concern with government.

The Commission has been aware for some years that many of these problems are not discrete issues but caused by the systemic issues with the state of the law. However, the Commission does not have the resources to undertake a review of the extent and nature it believes is required. The Electoral Commission would also welcome the expertise and experience of the Law Commission in undertaking such a systemic review. A further factor which the Electoral Commission believes makes the Law Commission the most appropriate body to undertake this review is the independent and non-political status of the Law Commission. This is especially important when considering the reform of electoral law.

13. Have you been in touch with any part of the government (either central or local) about this problem? What did they say?

We have discussed this proposal with the Cabinet Office who we understand are considering the case for reform.

14. If the problem you have described has been previously considered by the government, why would it be appropriate for the Law Commission to look into this problem?

The Law Commission was conducting a consolidation exercise entitled The Parliamentary and Local Government Elections Consolidation project as part of its 8th programme of law reform. This was interupted a number of times due to the transfer of responsibility for elections between government departments. It was then paused at the request of the then Department of Constitutional Affairs following the government's response to the Electoral Commission's 2003 report Voting for Change and the enactment of the Electoral Administration Act 2006. Work was also affected by the judgement on prisoner enfranchisement in Hirst v UK(no 2) (2006) 42 EHHR 41 and the subsequent government reports on prisoners' voting rights.

The Electoral Commission acknowledges the work already done by the Law Commission in this area and would hope that consolidation exercise would contribute to the overarching and systemic reform project the Electoral Commission would like the Law Commission to undertake.

15. Is any other organisation such as the government or a non-governmental group currently considering this problem? Have they considered it recently? If so, please give us the details of their investigation of this issue.

We understand that the Association of Electoral Administrators and the CPS are in favour of reform.

Thank you for your response.

Please send it to us by **Friday 15 October 2010**.

Government Code of Practice on Consultation

The Seven Consultation Criteria

1. **When to consult**

   Formal consultation should take place at a stage when there is scope to influence the policy outcome.

2. **Duration of consultation exercise**

   Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible

3. **Clarity and scope of impact**

   Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.

4. **Accessibility of consultation exercises**

   Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.

5. **The burden of consultation**

   Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.

6. **Responsiveness of consultation exercises**

   Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.

7. **Capacity to consult**

   Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Comments and suggestions

You are invited to send comments to the Law Commission's Consultation Co-ordinator about the extent to which the criteria have been observed and to suggest ways of improving our consultation process. Contact Phil Hodgson, Consultation Co-ordinator, Law Commission, Steel House, 11 Tothill Street, London SW1H 9LJ. Email: phil.hodgson@lawcommission.gsi.gov.uk

Full details of the Government's Code of Practice on Consultation are available on the Department for Business Innovation and Skills' website at: http://www.bis.gov.uk/policies/better-regulation/consultation-guidance

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